No. 663

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL., *Appellees*.

On Appeal from the District Court of the United States for the District of Columbia.

BRIEF FOR AMICUS CURIAE, PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

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DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The opinions of the District Court of the United States for the District of Columbia (R. 913, 919) are reported in 55 F. S. 51 and 56 F. S. 670.

The first report of the Interstate Commerce Commission is reported at 256 I. C. C. 769 (R. 835), and the supplemental report in 258 I. C. C. 559 (R. 813).

PRELIMINARY STATEMENT

The Public Utilities Commission of the District of Columbia offers this brief as an *amicus curiae* because its powers are directly affected by the orders issued by the Interstate Commerce Commission in this proceeding. This *amicus curiae* believes that the orders constitute an invasion of its exclusive jurisdiction to fix rates and charges on street railways and buses performing intrastate transportation within the District of Columbia. It believes that the action of the Interstate Commerce Commission in this proceeding constitutes an unauthorized invasion of local regulatory authority, which both Congress and this Court have carefully undertaken to preserve.

SUMMARY OF ARGUMENT

The Interstate Commerce Commission has asserted and attempted to exert a power to regulate street railway fares and local bus fares in the District of Columbia contrary to the express prohibition in the proviso of Section 216(e) of Part II of the Interstate Commerce Act. That proviso was incorporated for the express purpose of prohibiting federal regulation of intrastate transportation under authority of the Shreveport doctrine. Congress denied the Commission authority to prescribe, or in any manner regulate, charges for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce, or for any other purpose whatever. The Commission has attempted an unwarranted and unauthorized inroad upon local authority, and for that reason its order is void.

Not only is the Commission's order without authority of law, but it is also in conflict with specific provisions of the Act, as well

as the national transportation policy declared by Congress. Its action constitutes an invasion of the domain of state power. It has asserted jurisdiction over two motor carriers which are excepted from its jurisdiction under the strict letter of Section 203(b)(8), and over two other carriers that are excepted from its jurisdiction under the spirit of that section. It has erroneously treated four separate and independent carriers as constituting a general system of transportation requiring joint rates, contrary to its powers.

ARGUMENT

The Interstate Commerce Commission Has No Authority to Regulate Street Railway Fares or Local Bus Fares.

In its first report, *Passenger Fares between District of Columbia and Nearby Virginia* (256 I. C. C. 769, R. 835), the Interstate Commerce Commission said a question was raised as to its authority to prescribe through routes and joint fares between points served by the urban bus lines of the Capital Transit Company and the Virginia lines, and expressed the opinion that it had such authority under the provisions of Section 216(e) of the Act (49 U. S. C. A. § 316(e)). At page 770 of its report the Commission said the Capital Transit Company "furnishes regular urban and suburban streetcar and bus service for the transportation of passengers in the District and nearby Maryland, and bus service between the District and the Pentagon". The Commission said the Company's bus and streetcar operations are "commingled and blended" (p. 775). After describing the operations of the Capital Transit Company, the Commission expressed the opinion that in view of the circumstances described—

> "effective exercise of the authority expressly conferred upon us to regulate the bus fares necessarily involves some regulation of the Transit Company's streetcar fares, insofar as they apply to the transportation considered." (P. 775, R. 842.)

It accordingly held that it has

> "jurisdiction to require the application of the fares herein found reasonable to the combined bus-streetcar operations of the Transit Company and to those operations and bus operations of the Virginia Lines." (P. 775, R. 842.)

The Public Utilities Commission of the District of Columbia believes that this attempted exercise of jurisdiction to control and fix fares over the combined bus and streetcar operations of the Transit Company constitutes the most important issue before the Court. The District Commission believes that the jurisdiction asserted and attempted to be exercised is contrary to express provisions of the Motor Carrier Act, and constitutes an unauthorized invasion by a federal agency of local and state regulatory authority.

The Federal Commission reaches its conclusion of jurisdiction by referring to Sections 15(3) (49 U. S. C. A. § 15 (3)) of Part I and 307(d) (49 U. S. C. A. § 907 (d)) of Part III of the Act. Section 15(3) authorizes the Commission to establish through routes, joint classifications, joint rates, divisions of rates and operating conditions of *railroads;* but the section contains this denial of authority:

> "The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character; * * *"

Section 307(d) of Part III is a similar provision in reference to *water carriers*, and it likewise expressly denies the Commission authority over street railways in the following language:

> "The Commission shall not, however, establish any through route, classification, or practice, or any rate,

fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and common carriers by water."

After referring to the denials of authority in Sections 15(3) and 307(d), the Commission then cites Section 216(e) of Part II (49 U. S. C. A. § 316(e)) and says there is no similar limitation in it. This statement completely ignores the proviso in Section 216(e) and the reasons for its inclusion, which was expressly inserted in the original bill by amendment of the House Committee on Interstate and Foreign Commerce, as shown by its Report No. 1645, 74th Congress, First Session. The proviso reads as follows:

> "*Provided*, however, That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

At page 4 of its report, the House committee gave the following reasons for its incorporation of the proviso in Section 216(e):

> "An amendment has been made by the committee which prohibits the extension of Federal regulation in intrastate transportation as exercised under authority of the decision of the Supreme Court in the *Shreveport case* and of the provisions of section 13(4) of the Interstate Commerce Act."

"When the legislative purpose is so plain", the Commission "cannot assume to do that which Congress has refused to do." *Southern S. S. Co.* v. *National Labor Relations Board*, 316 U. S. 31, 44. When Congress said that nothing in this part shall empower the Commission to regulate the rate, fare or

charge for intrastate transportation, it is difficult to believe that Congress meant that it "shall have power to regulate the rate, fare or charge for intrastate transportation". *Connecticut Light and Power Co.* v. *Federal Power Commission*, No. 189, October Term, 1944 (decided March 26, 1945).

Because the exception in Section 216(e) does not in its denial of authority include the precise words "street electric passenger railways" as do Sections 15(3) and 307(d), the Commission has reached the strained construction that Congress has conferred upon it the power to regulate rates and fares on street electric passenger railways. This is assertion of a power that Congress has always denied to the Interstate Commerce Commission. The Commission's construction is not only contrary to the ordinary rules of statutory construction but also to the long-established and well-recognized administrative law that an agency of Congress or of the Legislature has only such powers as have been expressly delegated to it. Administrative agencies may not exert a power not expressly delegated to them. They do not derive powers or jurisdiction by implication.

If there could be any doubt about the Commission's authority to regulate street railway fares or local bus fares under Section 216(e), it is removed by the statement from the report of the House Committee on Interstate and Foreign Commerce referred to hereinabove.

"The Interstate Commerce Commission is without jurisdiction over intrastate rates except to protect and make effective some regulation of interstate commerce." *Illinois Commerce Commission* v. *Thomson*, 318 U. S. 675, 684. But this authority under the Motor Carrier Act was expressly prohibited by the proviso in Section 216(e). The power asserted by the Commission in this proceeding is directly contrary to the express prohibition contained in that proviso.

Contrary to the construction arrived at by the Interstate Commerce Commission, the proviso in Section 216(e) is even broader than the prohibitions in Sections 15(3) and 307(d).

In the two sections last mentioned the only denial was as to "street electric passenger railways", while in Section 216(e) Congress went even further and denied the Commission authority to prescribe "or in any manner regulate" fares or charges "for intrastate transportation" or for any service connected therewith for the purpose of removing discrimination against interstate commerce or "for any other purpose whatever." It would be difficult to employ more definitive language denying the Commission the authority to regulate or control fares over the bus and street railway system in the District of Columbia.

The Commission, by its unusual and strained construction of Section 216(e), found that the effective exercise of its authority to regulate bus fares from Constitution Avenue to Pentagon, which produces "less than 2 percent" of all revenues, necessarily involves regulation of streetcar fares of the Transit Company. It accordingly held that it had jurisdiction to require the application of fares found by it to be reasonable to the combined bus-streetcar operations of the Transit Company. This construction is in direct conflict with the specific purpose stated by the House committee for the inclusion of the proviso in Section 216(e).

"Construction may not be substituted for legislation." *U. S. v. Missouri Pacific Railroad Co.*, 278 U. S. 269, 278. The Commission may not by a far-fetched and forced construction reach a result contrary to the prohibition in Section 216(e). *W. U. Telegraph Co. v. Lenroot*, No. 49, October Term, 1944, 65 S. Ct. 335.

The Shreveport doctrine (*Houston & Texas Ry. v. U. S.*, 234 U. S. 342, 351) was established under the authority of Part I of the Interstate Commerce Act. Under that doctrine the Interstate Commerce Commission has authority to regulate intrastate rates when they are found to discriminate against, or to cast a direct burden upon, interstate commerce transported by railroads. But that doctrine has never been applied to fares of street electric passenger railways not en-

gaged in the business of transporting freight. The Interstate Commerce Commission attempted on November 27, 1909, to regulate the intrastate passenger fares of the Omaha Street Railway. The Omaha Company was not authorized by its charter to haul freight, but was limited to carrying passengers only. Temporary injunction was granted, and on appeal, this Court held that the Act did not confer jurisdiction upon the Commission to regulate fares of street electric passenger railways not engaged in transporting freight, and made the injunction permanent. *Omaha Street Ry.* v. *Interstate Commerce Commission*, 230 U. S. 324.

After the Commission had promulgated its order in the *Omaha Street Railway* case, Congress, on June 18, 1910, amended the Interstate Commerce Act, and prohibited the Commission from regulating fares of street electric passenger railways not engaged in the business of transporting freight. That prohibition is found in Section 15(3) of the Act (49 U. S. C. A. § 15 (3)). Since that time the Commission has not undertaken to regulate fares on street railway lines until it issued its order in this proceeding. The Capital Transit Company, like the Omaha Street Railway, is chartered only for the purpose of engaging in transportation of passengers by street railway or bus. It has no charter right to transport freight.

At page 774 of its report (R. 841) the Commission referred to the *Omaha Street Railway* case, and to *U. S.* v. *Village of Hubbard*, 266 U. S. 474. The Commission says that the *Village of Hubbard* case is authority for its jurisdiction to regulate "interurban electric railroads" engaged in interstate passenger operations. In that case the Commission issued an order raising intrastate interurban passenger fares. As this Court there said, the Commission

> "granted the relief under the rule of *The Shreveport Case*, 234 U. S. 342, and *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563."

which rule is specifically denied the Commission by the proviso in Section 216(e). The *Village of Hubbard* case does not support the Commission's exertion of a power in the instant proceeding. In that case the company involved was an "interurban electric railroad", not a street electric passenger railway. The *Village of Hubbard* case is not applicable in the instant proceeding, first, because the Commission is denied the right to regulate fares on street railways, as decided by the Court in the *Omaha Street Railway* case, and for the further reason that Section 216(e) of the Motor Carrier Act specifically prohibits its regulation of fares of local buses or streetcars.

When Congress wrote Part II (The Motor Carrier Act, 49 U. S. C. A. § 301, *et seq.*), it took particular caution to prevent the application of the Shreveport doctrine and the provisions of other parts of the Act requiring through routes and joint fares to common carriers by motor vehicles. In presenting the bill, with the amendments recommended by the Committee on Interstate Commerce, Senator Wheeler, chairman of the committee, stated that Section 216(a) (49 U. S. C. A. § 316(a)) as amended by the committee is confined to common carriers of passengers by *motor vehicle*. He said:

> "In the original bill there was a provision for *mandatory* through routes and joint rates between all motor common carriers and carriers by rail, express, and water. There was substantially unanimous disapproval of this provision." (79 Congressional Record, Part 5, p. 5655.) (Italics supplied.)

Senator Wheeler explained that if this mandatory provision remained in the bill, small operators feared it would give preference to railroads and—

> "Hence paragraphs (b) and (c) have been introduced by the committee in order to make joint through routes and rates *permissive* between motor carriers of property and between motor carriers of passengers

or property and other agencies of transportation." (79 Congressional Record, Part 5, p. 5655.) (Italics supplied.)

Section 216(c) (49 U. S. C. A. § 316 (c)) reads in part as follows:

> "(c) Common carriers of property by motor vehicle *may* establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle *may* establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water." (Italics supplied.)

After providing that common carriers by motor vehicle *may voluntarily* establish through routes and joint rates with other kinds of agencies, the section then provides in sub-paragraph (e) the remedy where such rates, charges, classifications, etc., are found to be in violation of the section or Section 217, but Congress wrote into Section 216(e) the exception to the Shreveport doctrine in the language above quoted. The sole reason for the inclusion of this proviso is to exclude from the jurisdiction of the Commission the right to regulate intrastate transportation by *any method whatever* under the authority of the Motor Carrier Act. Not only does the exclusion of "intrastate transportation" from its authority deny the Commission the right under Part II to regulate street electric passenger railways, but intrastate transportation *by any other method*, whether it be by bus or by street railway or both. The denial of authority in Section 216(e) was purposely made stronger and broader than the prohibitions in Sections 15(3) and 307(d). This conclusion is evidenced not only by the broad language of the proviso, but it is also shown by the committee report stating the specific purpose of the proviso.

In *New England Motor Carrier Rates*, 9 M. C. C. 737, the Commission itself recognized the lack of authority which it here asserts when at page 738 it said:

> "Under Section 216(e) of the Motor Carrier Act, 1935, we are without authority to prescribe, or in any manner regulate, rates for intrastate transportation, to remove discriminations against interstate commerce or for any other purpose."

In discussing the basic principles of regulation of motor carriers as prescribed in the bill, the House committee in its Report No. 1645, *supra*, pointed out the various motor carriers exempt under the bill, and named trolley buses similar to street railway service and buses used in zones commercially a part of a municipality when such transportation is under common control for continuous carriage or shipment. The Commission's own report shows that Pentagon is located within the municipal zone of Washington as defined by it at 3 M. C. C. 243. It stated (256 I. C. C. at page 782) that the transportation here involved—

> "is the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District. That part of the transportation here under consideration is not comparable with the transportation generally necessary in extension of transit service into suburban areas. * * * These installations represent to all intents and purposes an extension of the main business area of Washington." (R. 849.)

These findings by the Commission make it abundantly clear that the transportation over which it has attempted to exert a control is essentially local and municipal transportation which Congress by both Sections 203(b)(8) (49 U. S. C. A. § 303(b)) and 216(e) evidenced a clear intent to retain under local regula

Section 13(4) (49 U. S. C. A. § 13(4)), referred to in the quotation from the House report, authorized the Interstate Commerce Commission to remove any preference or prejudice or discrimination in intrastate commerce against interstate commerce moved by *railroad*. It is significant that there is no such language in the Motor Carrier Act; but on the contrary, Congress in mandatory language told the Interstate Commerce Commission that it had no such authority under the Motor Carrier Act. Could Congress have used more positive language in denying to the federal agency the power it has asserted and has attempted to exercise?

There is abundant evidence, both in the Motor Carrier Act, as well as in the history of the legislation, that Congress did not intend an invasion of local or state control and regulation of transportation by motor vehicles. Senator Wheeler said the legislation "has the endorsement of practically all the State commissions throughout the country." (79 Congressional Record, Part 5, p. 5650.) It is hardly conceivable that practically all the state commissions throughout the country would support legislation that invaded state regulation of local transportation. It is inconceivable to think that the state regulatory bodies would have approved or advocated such legislation, if they had believed that the federal agency would assert a power or attempt to exercise such power over streetcar and bus fares in a municipality.

One piece of evidence on the part of Congress that conflict with local and state regulation was not intended is shown by the policy set forth originally in Section 202(a) of the Act as passed (49 U. S. C. A. § 302 (a)) and in the national transportation policy as it is defined in Section 1, Title I, of the Transportation Act of 1940 (54 Stat. 899), amendatory of both Parts I and II of the Interstate Commerce Act. Both in the original Act, as well as the amended Act, the policy of Congress and the national transportation policy defined by it is "to cooperate with the several States and the duly authorized officials thereof".

Senator Wheeler said (79 Congressional Record, Part 5, p. 5653):

> "A basic principle of the bill is that the regulatory bodies of the several States shall share in its administration because of their intimate knowledge of local conditions, their more direct contacts with the carriers subject to regulation, and the relation of such regulation to the use of the State's highways. To that end provision is made for the primary consideration of all important matters by joint boards composed of the representatives of the States wholly or chiefly concerned."

He further stated that it was the judgment of Coordinator Eastman (who drafted the original bill) and of the Commission that if the various state commissions could meet on these matters, it would have a salutary effect upon the whole situation, and that the states will not feel that the Government is trying to usurp all the authorities of the state governments (p. 5653).

If the Commission has authority to regulate bus and streetcar fares, directly or indirectly, in the District of Columbia and to compel Capital Transit Company to establish through routes and joint fares with the Virginia companies here involved, it has authority to compel it to establish through routes and joint fares with every other interstate motor carrier coming into the District of Columbia. If it has the authority it has attempted to exert in this proceeding, it has authority to require Capital Transit Company to establish joint fares with the Greyhound Bus Lines coming into the District of Columbia. Such operation would not come under the exception of Section 203(b)(8), because the Greyhound Lines go far beyond the municipal zone. Such an undertaking would also be free from the mandatary provision of Section 305(a) (49 U. S. C. A. § 305(a)), because the operation would involve more than three states. To answer that the Commission has not undertaken such exertion of power does not

settle the question of its power. If it has the power in the instant case, it has it in the other.

Then, if the Commission has the power attempted to be exercised here, it would have the same authority at the terminal of the Greyhound Lines in New York or Cleveland, or elsewhere, and it could with equal validity require joint fares with the local bus and street railway lines in those cities. One is as illogical as the other.

In its declaration of the national transportation policy, Congress clearly demonstrated its purpose that the Motor Carrier Act be administered in full cooperation with the several states and their duly authorized officials. Not only was this made clear in the national transportation policy, but Congress went a step further and authorized the creation of joint boards composed of representatives of states, and required certain matters arising under the Motor Carrier Act to be referred to such boards.

Not until the Motor Carrier Act was passed in 1935 did Congress lay down such a strong declaration of policy to cooperate with the states in the administration of federal laws. In no other part of the Interstate Commerce Act dealing with transportation by railroads (Part I, 49 U. S. C. A. § 1, *et seq.*), transportation by water carriers (Part III, 49 U. S. C. A. § 901, *et seq.*) and with freight forwarders (Part IV, 49 U. S. C. A. § 1001, *et seq.*) has Congress demonstrated to the same degree its desire to avoid conflict or occasions for conflict between federal agencies and state authority as it did in the Motor Carrier Act.

If there be doubt as to the applicability of the Motor Carrier Act to the local bus and street railway operations of the Capital Transit Company, that doubt must be resolved so as to deny jurisdiction to the federal agency. In *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349, 351, this Court said that when, in order to protect interstate commerce, Congress has regulated activities which in isolation are merely local, it has normally conveyed its purpose explicitly. In the proviso

n Section 216(e) Congress conveyed its purpose just as xplicitly in telling the Interstate Commerce Commission that t may not regulate bus or street railway fares even for the urpose of removing discrimination against interstate com- nerce. In spite of the congressional purpose declared in the ational transportation policy to avoid conflict or occasions or conflict with state authority, and the specific mandate that he federal agency may not regulate local transportation, the Commission has in this proceeding for the first time under- aken to assert and exercise a control and regulation of muni- ipal bus and street railway fares. The Commission may not gnore the prohibition in Section 216(e) and find in that or ther sections of the Act "radiations beyond the obvious mean- ng of language unless otherwise the purpose of the Act would e defeated." *Bunte Bros., supra.*

The admonition given by the Court in the *Bunte Bros.* case s most appropriate here when it said:

> "An inroad upon local conditions and local standards of such far-reaching import as is involved here, ought to await a clearer mandate from Congress." (P. 355.)

n *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 152, this Court said, "Where Congress has not clearly indicated a pur- ose to precipitate conflict, we should be reluctant to do so by ecision." In the instant proceeding Congress has clearly ndicated a purpose not to precipitate conflict. Congress emonstrated its consciousness of the "existence and force and unction of established institutions of local government" in he enactment of the proviso in Section 216(e), the exception f Section 203(b)(8) and Section 205(a). It is an appropriate ime, as this Court said in the *Davies Warehouse* case, to heed he maxim reiterated in *City of Yonkers* v. *U. S.*, 320 U. S. 85, 690, that "the extension of federal control into these tradi- ional local domains is a 'delicate exercise of legislative policy n achieving a wise accommodation between the needs of

central control and the lively maintenance of local institutions.'" This Court has spoken to like effect in *Vinson* v. *Washington Gas Light Co.*, 321 U. S. 489, 498; *Palmer* v. *Commonwealth of Mass.*, 308 U. S. 79, 84; *Parker* v. *Brown*, 317 U. S. 341, 351; *State of Florida* v. *U. S.*, 282 U. S. 194, 211-212. In the foregoing decisions this Court has said that evidence of federal authority should appear affirmatively and not rest on inference alone. Not only is there a lack of affirmative power, but on the contrary, there is specific prohibition against the authority sought to be asserted by the federal agency in the instant proceeding.

The orders constitute exertion of power not possessed by the Commission and not intended by Congress, and for that reason they are void. *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 444; *U. S.* v. *Missouri Pacific Railroad Co.*, 278 U. S. 269.

The Order Under Attack Does Not Constitute an Application of the National Transportation Policy Defined in the Act.

In the original report the Commission found that two companies were not engaged in intrastate transportation over their entire operations and that two others, while engaged in intrastate operation in both jurisdictions and subject to control by the two regulatory bodies, were performing restricted transportation in the District, and for those reasons the Commission assumed jurisdiction. It bolstered this assumption of jurisdiction by the statement that:

> "In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203(b)(7a), necessary to carry out the national transportation policy." (R. 843.)

The statement in respect to the necessity for carrying out the national transportation policy was without evidence.

Under no theory can the national transportation policy as defined in the Transportation Act of 1940 be used by the federal agency for an invasion of local and state rights. A contrary purpose is disclosed in the declaration by Congress as to what the national transportation policy is. One of the basic elements of that policy is "to cooperate with the several States and the duly authorized officials thereof."

That the element of cooperation with the several states and their duly authorized officials was considered by the Congress as an important one is evidenced by the exemption of Section 203(b)(8), as well as the sections providing for the creation of joint boards composed of representatives of the states to administer the Motor Carrier Act, and the provisions prohibiting the application of the Shreveport doctrine. Other evidence of the importance of this basic element in the national transportation policy is found in congressional committee reports on the legislation, references to which have been made in other portions of this brief, as well as by statements of members of Congress in debating the proposed legislation.

For instance, Senator Wheeler said (79 Congressional Record, Part 5, p. 5650):

> "Furthermore, an exemption is made, unless the Interstate Commerce Commission finds that the law cannot be made to work without its inclusion to some extent, of the transportation of property locally or between contiguous municipalities or commercial zones, * * *."

The proceeding before the Commission was not instituted by it either on its own initiative or on complaint that the Motor Carrier Act "cannot be made to work" without the exercise of federal jurisdiction over municipal and commercial zone transportation. The Motor Carrier Act has been made to work successfully from its enactment without complaint of a breakdown of enforcement of the law.

The national transportation policy laid down by Congress was not needed, nor was it intended, to confer jurisdiction.

The national transportation policy does not grant jurisdiction. *Mississippi Valley Barge Line Co.* v. *U. S.*, 292 U. S. 282, 288. The policy is merely a guide in the administration of the powers expressly granted to the Commission. *McLean Trucking Co.* v. *U. S.*, 321 U. S. 67, 82.

Another very strong piece of evidence of the importance of this feature of the national transportation policy is found in the proviso in Section 216(e), where Congress specifically provided that the Motor Carrier Act shall not empower the Interstate Commerce Commission to prescribe, or in any manner regulate, intrastate rates, or any service connected with intrastate transportation, to remove discrimination against interstate commerce, or for any other purpose whatever. On page 5 herein will be found a quotation from House Report No. 1645, explaining that this proviso was written into the bill by the House committee to prohibit the extension of federal regulation in intrastate transportation under the Shreveport doctrine, or the provisions of Section 13(4) of the Act.

The foregoing facts indicate that the policy of cooperating with the states and their officials, even where the federal agency has authority, is just as important, if not more important, than the policy of encouraging reasonable charges for transportation service without unjust discriminations, undue preferences, or advantages. Indeed, the proviso in Section 216(e) indicates that the policy of encouraging reasonable charges without unjust discriminations is of less importance than that of conflicting with local and state authority, because that provision will not permit interference with such local authority, even for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

The Commission has stated no sound reason for invoking the national transportation policy to exert a federal power which Congress intended to leave to local and state regulation. The Commission has not named the element of the national transportation policy upon which it relies to exert the attempted

power. It may not disregard the exemption in Section 203(b)(8) and the prohibition in Section 216(e). The Commission has not been commissioned to effect the policy of the Act so that "it may wholly ignore other and equally important Congressional objectives." *Southern S. S. Co.* v. *National Labor Relations Board, supra,* at page 47. A policy declaration by Congress is relevant and entitled to respect as a guide in resolving any ambiguity or indefiniteness, if any, in the specific provisions which purport to carry out its intent. It cannot be wholly ignored. The declared purpose might also be looked for in specific denials of power to the Commission, such as that found in the proviso in Section 216(e). *Connecticut Light and Power Co.* v. *Federal Power Commission, supra.*

The national transportation policy declared by Congress is "all to the end of developing, coordinating, and preserving a national transportation system * * * adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." The operations of the four companies described by the Commission (R. 837) and the Commission's conclusions and findings that the transportation involved is urban and "the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District", and represents to all intents and purposes "an extension of the main business area of Washington" (R. 849), show clearly that the four companies involved are not parts of a "national transportation system". The Commission's findings show that the transportation is a part of the municipal area of Washington. It is intra-terminal transportation in the District of Columbia, not inter-terminal. If the Virginia installations "represent to all intents and purposes an extension of the main business area of Washington" (R. 849), the transportation is intra-District transportation, which the Commission may not regulate for any purpose whatever. The attempt to exert regulation over the local bus and street railway opera-

tions of Capital Transit Company is contrary to the policy declared by Congress and is specifically denied the Commission by the proviso in Section 216(e).

Not only is there an absence of finding that the transportation involved is part of the national transportation system, but on the contrary, the evidence and the Commission's findings show that it is not. The evidence clearly shows that the four companies are entirely independent operating companies, neither having any connection with the other or with any other transportation agency. The Commission's findings and description of their operations show they are not related and are not parts of a transportation system.

The national transportation policy does not contemplate "urban" mass transportation "between residential areas of the District and commercial and Government establishments in the District". If Congress had intended the regulation of urban transportation between residential areas and commercial establishments within a municipality to be its declared policy, it would have found apt words to say so. If it had intended that regulation of local bus and street railway transportation constituted part of the national transportation policy, Congress would not have enacted the proviso in Section 216(e). If Congress had intended that regulation of local bus and street railway fares constituted part of the national transportation policy, and that local buses and street railways constituted part of the "national transportation system", it would not have repudiated that policy by enacting the proviso in Section 216(e), which prohibited such regulation.

Since the regulation of District bus and street railway fares is specifically denied to the Commission, and since the regulation of such local transportation—urban transportation—is contrary to the policy declared by Congress, the Commission cannot defeat that congressional purpose by trying to apply the national transportation policy, which Congress itself refused to do. Urban transportation in the District of Columbia

is not dependent for exemption from federal regulation on Section 203(b)(8). It is excluded by the whole body of the Motor Carrier Act. Therefore, the Commission cannot apply the national transportation policy to bus and street railway transportation in the District of Columbia and remove it from Section 203(b)(8), because it was never there to be removed. Transportation that "is essentially urban in character" (R. 823) is not contemplated within Section 203(b)(8).

The Commission's statement that in any event it is of opinion and finds that the application of the Act to the transportation involved is, in the language of Section 203(b)(7a), necessary to carry out the national transportation policy (R. 843) constitutes a misconception of the national transportation policy and a misconception of the transportation that comes within the exemption of Section 203(b)(8). Since urban, municipal transportation is not subject to the Motor Carrier Act, it cannot be found in the exemption in Section 203(b)(8); therefore, the bus and street railway operations in the District of Columbia were never within the exemption to be removed. The Commission has no authority to put a straw man in the exemption in order to knock him out. The national transportation policy does not grant, and was not intended to grant to the Commission, a power which Congress withheld by specific proviso. Justification for exercise of federal power within what would otherwise be domain of state power must clearly appear. *State of Florida* v. *United States*, 282 U. S. 194, 211-212.

Amicus curiae does not believe that the national transportation policy calls for an adjustment in rates merely because of dissatisfaction among certain employees with fares to their places of employment. Preferences in places of employment do not constitute a sound basis for rate-making or regulatory power. In *Interstate Commerce Commission* v. *Northern Pacific Ry. Co.*, 216 U. S. 538, 545, this Court said preferences of travelers did not justify the exertion of power to establish through routes and joint fares. Neither does *amicus curiae*

believe that the level of salaries nor the pecuniary ability of passengers is an element of the national transportation policy. Furthermore, the Interstate Commerce Commission itself has said that the applicability of rates "is not dependent on the ability of the shipper to pay." *Stuart* v. *Norfolk & Western Ry. Co.*, 191 I. C. C. 13, 18. We have found no decision of this Court holding that the passengers' ability to pay is an element in rate-making.

CONCLUSIION

It is respectfully submitted that the orders of the Interstate Commerce Commission are illegal and void, because the Commission had no authority to issue them. The judgment of the lower court should be affirmed.

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